

REMARKS

In accordance with the helpful suggestions of the Examiner, applicant submits the attached Terminal Disclaimer in order to obviate the non-statutory double patenting rejection based on the judicially created doctrine grounded in public policy. The attached Terminal Disclaimer is in compliance with 37 CFR 1.321(c) and has been executed by the undersigned registered attorney who is of record in the subject application.

In addition, the Examiner rejected claims 1-25 under 35 USC Section 103(a) as being unpatentable over Barker, U.S. 4,251,105. Before discussing the teaching of the mobility aid of the Barker patent, it is noted that in the specification of the subject application at paragraph [0040] the following is stated:

“An open-end 36 exists at the distal ends of the handle frame 32 between the gripping sections 34, 34. In use, the user will enter the open-end 36 of the apparatus 10 and grasp the gripping sections 34 for support while performing exercises. The open-end 36 is of sufficient size to permit a number of different body sizes to enter and perform their exercises, including users who require a wheelchair. The open-end of the base frame 36 is sufficiently wide to enable a wheelchair to extend into the base frame to facilitate the user being in a position to comfortably use the apparatus 10.”

This capability of the portable exercise apparatus of the subject invention is brought about by the fact that the first arm and the second arm of the upper handle assembly are cantilevered from the base member of the handle frame. Accordingly, there is no interconnection between the arms of the handle frame and the lower arms of the U-shaped base frame, as is the case in the mobility aid of the Barker reference. More particularly, as shown in Barker in Fig.

1, extending from each upper arm 2 are two vertical legs 1, with the rear vertical legs restricting entrance of the user into the mobility aid, especially if the user is wheelchair bound. Hence, the upper arms 2 are not cantilevered from the base of the upper handle structure of the mobility aid of Barker. In summary, a person in a wheelchair would be restricted in being able to move the wheelchair within the space designated 36 in Fig. 1 of the subject invention, and thus the utility of the mobility aid of Barker is greatly compromised, as contrasted to the portable exercise apparatus of the subject invention.

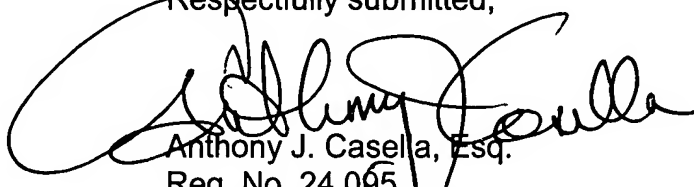
In order to more distinctly define and particularly point out the structural and functional features of the subject invention as contrasted to the prior art Barker patent, each of the independent claims 1, 9 and 18 have been amended to specifically set forth that "said first arm and said second arm of said handle frame being cantilevered from said base member...". In addition to the structural and functional distinctions between applicants' invention as defined by the claims 1-25 and the teaching of the Barker reference, it is also noted, as pointed out by the Examiner in the Official Action, that Barker fails to teach the side members extending radially outwardly more so than the handle bars. This also contributes to the greater utility of the subject invention as defined by the claims 1-25 and is another structural and functional distinction between claims 1-25 and the teaching of Barker.

Based on the above, it is respectfully submitted that claims 1-25 are structurally and functionally distinguishable from the prior art, and provide greater utility to a person requiring use of a portable exercise apparatus, and as such

claims 1-25 define patentable subject matter, and allowance thereof is respectfully solicited.

If the Examiner has any questions relative to the above, he is respectfully requested to telephone collect applicants' attorney at the number below.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Anthony J. Casella', is written over the typed name and registration information.

Anthony J. Casella, Esq.

Reg. No. 24,095

Customer No. 004218

CASELLA & HESPOS LLP

274 Madison Avenue – Suite 1703

New York, NY 10016

Tel. 212-725-2450

Fax: 212-725-2452

Date:

11/9/06